

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JENNIFER K. GROVES,

Defendant-Appellee.

UNPUBLISHED
February 21, 2006

No. 257785
Eaton Circuit Court
LC No. 03-020283-FH

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the trial court's order granting defendant's motion to withdraw her plea of nolo contendere to attempted resisting and obstructing a police officer under MCL 750.92. We vacate and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court abused its discretion in granting defendant's motion to withdraw her plea of nolo contendere. A trial court abuses its discretion if an objective observer considering the same facts on which the trial court relied would find no justification for the ruling or the result essentially violates fact, logic, or law or proceeds from bias or passion. *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959); *People v McSwain*, 259 Mich App 654, 685; 676 NW2d 236 (2003).

There is no absolute right to withdraw an accepted guilty plea. *People v Gomer*, 206 Mich App 55, 56; 520 NW2d 360 (1994). Courts may permit a guilty plea to be withdrawn in the interest of justice before sentencing unless withdrawal of the plea would substantially prejudice the prosecutor's ability to prosecute the defendant because of the prosecutor's reliance on the plea. MCR 6.310(B)(2). In the absence of a procedural error in receiving the plea, a defendant must establish a fair and just reason for withdrawal of the plea. *People v Harris*, 224 Mich App 130, 131; 586 NW2d 149 (1997); *People v Jackson*, 203 Mich App 607, 611; 513 NW2d 206 (1994). A fair and just reason may be that the plea was the product of fraud, duress or coercion, *Gomer, supra* at 58, erroneous legal advice coupled with actual prejudice to legal rights, *People v Jackson*, 417 Mich 243; 334 NW2d 371 (1983); *People v Shannon*, 134 Mich App 35, 38; 349 NW2d 813 (1984), or if the bargain on which the plea was based was illusory, i.e., that the defendant received no benefit from the bargain, *Harris, supra* at 131. If the facts of the case indicate that the plea was voluntary, it will be upheld regardless whether the defendant received consideration in return. *Id.* Mere dissatisfaction with a probable sentence is not a

sufficient basis on which to allow a withdrawal of a plea. *People v Haynes*, 221 Mich App 551, 559; 562 NW2d 241 (1997).

In this case, defendant pleaded no contest under a plea agreement to attempted resisting and obstructing a police officer. MCL 750.81d(1) and MCL 750.92. The court found a factual basis for defendant's plea in the transcript of the preliminary examination and determined that defendant's plea was voluntary, knowing, and understanding. After defendant reviewed the presentence report and learned that it recommended a sentence of sixty days in jail, she moved to withdraw her plea. When the court denied defendant's first motion to withdraw her plea, she obtained new counsel and again moved to withdraw her plea. The trial court granted defendant's second motion finding that defendant had entered a plea by standing mute, did not admit the charges, had difficulty in understanding the plea agreement, and apparently received erroneous legal advice.

The people now appeal that ruling, arguing that the court abused its discretion in allowing defendant to withdraw her plea because she did not present a fair and just reason to justify the withdrawal of her plea. We agree. Based on our review of the record, we find that the court abused its discretion in allowing defendant to withdraw her plea by mischaracterizing the facts and the law relating to defendant's plea. Contrary to the court's understanding, defendant did not stand mute, but pleaded nolo contendere. Further, defendant's claim that she pleaded nolo contendere because she could not articulate a basis for her guilt is belied by her indication at the plea hearing that she pleaded nolo contendere to avoid potential civil liability. Moreover, defendant acknowledged on the record at the plea hearing that her plea was knowing, understanding, and voluntary. Finally, we note that defendant did not move to withdraw her plea until after she learned that the presentence report recommended a sentence of sixty days in jail. This suggests that defendant's actual motivation to withdraw her plea was based on sentencing concerns rather than her actual innocence and a legitimate defense. Accordingly, we vacate the order of the trial court granting defendant's motion to withdraw her plea and remand this case to the trial court for further proceedings, which may include an additional motion to withdraw defendant's plea.

Vacated and remanded. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald